

**REMARKS**

**I. Status of Claims**

Claims 77-80, 83-94, 97-107, 109-161, and 165-174 are now pending in this application. Claims 81-82, 95-96, 108, and 162-164 have been cancelled without prejudice or disclaimer. Claims 77-80, 83-94, 97-107, 109-161, 165, and 174 have been amended, support for those amendments can be found either in the original claims or in the specification, for example, at page 17, lines 18-21, at page 36, lines 23-26, and at page 37, lines 1-4, of the specification as filed. Accordingly, there is written description support for all the claims, as amended.

**II. Restriction Requirement**

The Examiner made the Restriction Requirement of May 1, 2008, final. See Office Action at 2-3. The Examiner withdrew claims 165-174 "from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention". The Examiner maintains that the common technical feature between the groups, a cosmetic composition, are anticipated by U.S. Patent No. 6,153,206 to Anton et al. ("Anton"). Office Action at 2. Applicants respectfully disagree for the following reasons.

Anton does not teach a polydispersity index, mean gloss, and transfer index as claimed. Furthermore, Anton teaches a synthetic polymer comprising a first repeat unit and a second repeat unit, wherein the term "repeat unit" means a monomer unit of the polymer which is present more than one time in the polymer chain. See col. 2, lines 13-22, and col. 3, lines 21-24. Accordingly, that synthetic polymer is not described as in claim 77, as amended, as "at least one film-forming linear ethylenic block polymer has a polydispersity index of greater than or equal to 2.5 and comprises at least one first block and at least one second block with different glass transition temperatures (T<sub>g</sub>) linked

together via an intermediate block comprising at least one constituent monomer of the at least one first block and at least one constituent monomer of the at least one second block, wherein said intermediate block is a random copolymer block”.

Moreover, Anton describes various types of copolymers in the table in col. 4 wherein each of the listed repeat unit utilized to form a block polymer, when polymerized to form a homopolymer, has a glass transition temperature above 40 °C. Therefore not a single one of the copolymers meets the recitation of claim 77, as amended:

“and the at least one first block is chosen from:

- a) a block with a Tg of greater than or equal to 40°C,
  - b) a block with a Tg of less than or equal to 20°C,
  - c) a block with a Tg from greater than 20 to less than 40°C,
- and the at least one second block is chosen from a category a), b) or c) different from the at least one first block “

Furthermore, claim 77 as amended is further distinguished from each of the copolymers in the table in col. 4 with the recitation that “said intermediate block is a random copolymer block”.

To the extent that Anton discloses the experimental procedures of how to make copolymer, see Example 1, col. 11, Anton simply discloses controlled polymerization. In contrast, to make the at least one film-forming linear ethylenic block polymer recited in claim 77, as amended one can perform sequential polymerization as illustrated in Examples 1-3 of the present application.

Hence, Anton does not anticipate claim 77, as amended, and the restriction requirement should be withdrawn.

Furthermore, Applicants respectfully remind the Examiner of the rejoinder procedure of M.P.E.P. § 821.04. The M.P.E.P. requires that “[i]n order to be eligible for

rejoinder, a claim to a nonelected invention must depend from or otherwise require all the limitations of an allowable claim." *Id.* Applicants point out that the claims of Groups II-III, which are directed to a multi-compartment kit comprising a make up composition claimed in claim 77 , and a cosmetic process comprising applying a make up composition as claimed in claim 77 , respectively, comply with this provision. Therefore, these claims are eligible for rejoinder once the make up composition of claim 77 is found allowable. Accordingly, Applicants respectfully request that all pending claims be examined in this application and allowed.

### **III. Priority**

Applicants appreciate the Examiner's indication that the earliest effective U.S. filing date of the instant application has been determined to be September 26, 2003, the international filing date of the corresponding PCT Application No. PCT/FR03/02847.

Certified copies of the French priority applications were filed with the Office on March 25, 2005. Applicants are in the process of acquiring certified translations of the French priority applications, and will submit them to the Office for determination of an effective filing date as September 26, 2002 once obtaining them.

### **IV. Information Disclosure Statement**

Applicants note with appreciation that the Examiner has indicated the English counterparts or the abstracts in English of the lined-through foreign documents, or the corresponding applications for the lined-through abstracts have been considered..

### **V. Claim Rejections - 35 U.S.C. §112 (1<sup>st</sup> Paragraph)**

Claims 77, 82, 108, 115, and 117 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement for reasons

as set forth at pages 4-6 of the Office Action. Specifically, the Examiner alleges that at least some embodiments of the scope of claim 117 are not possible. Solely to advance the prosecution of this application, Applicants have hereby amended claim 117 to read as follows:

The cosmetic composition according to Claim ~~77~~115, wherein the block with a Tg of between 20 and 40 °C is ~~totally or~~ partially derived from at least one monomer chosen from methyl methacrylate, isobornyl acrylate and methacrylate, butyl acrylate and 2-ethylhexyl acrylate, ~~and mixtures thereof.~~

Applicants believe that claims in question, as amended, are properly enabled by the specification and respectfully request a withdrawal of this rejection.

**VI. Claim Rejections - 35 U.S.C. §112 (2<sup>nd</sup> Paragraph)**

Claims 77-164 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Office Action at 6-8. Specifically, the Examiner alleges that it is not clear to one of ordinary skill in the art whether the limitation “mean gloss at 20 °..” recited in claims 77, 90, and 93-94 and the limitation “mean gloss at 60 °..” recited in claims 91 and 92 refer to a temperature or an angle. Applicants respectfully disagree. It is Applicants’ position that it is clear to one skilled artisan that the limitation in question refers to an angle. As noticed by the Examiner as well, Applicants always define temperature with a unit of °C in corresponding paragraphs of the specification. Furthermore, a skilled artisan should recognize the mean gloss of the same material differs when measured at different angles, and it should be always defined at certain angle. For the foregoing reasons, Applicants respectfully request that this rejection be withdrawn.

Additionally, the Examiner indicates that the limitation “weight of active material of polymer relative to the total weight of the composition” recited in claims 104-107 is not clear with respect to the active material of the polymer. Applicants greatly appreciate the Examiner’s diligence in calling Applicants’ attention to this issue and have amended the claims to moot that rejection. Accordingly, Applicants respectfully request the withdrawal of the rejection.

**VII. Claim Rejections - 35 U.S.C. §102**

Claims 77-80, 82-84, 86-94, 98-103, and 159-164 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Application Publication No. 2002/0115780 to MOUGIN (“Mougin”) for reasons set forth at pages 9-10 of the Office Action. Specifically, the Examiner contends that, since the compositions of Mougin provide high transfer resistance, it is reasonable that the cosmetic compositions taught by Mougin (e.g. Example 4) would meet the limitations of mean gloss and transfer index if measured under highly specialized conditions recited in claim 77. *Id.* at 9. Applicants respectfully disagree and traverse for at least the following reasons.

Mougin does not anticipate any of claims 77-80, 82-84, 86-94, 98-103, and 159-164, as amended. To properly anticipate Applicants’ claimed invention under 35 U.S.C. § 102, each and every element of the claim in issue must be found, “either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).” See M.P.E.P. § 2131.

Mougin does not disclose each and every element of Applicants' claimed invention, as exemplified in claim 77, as amended. Claim 77 as amended, recites, in relevant part: "wherein the at least one film-forming linear ethylenic block polymer has a polydispersity index of greater than or equal to 2.5." Mougin teaches that "these block ethylenic copolymers of elastic nature are preferably obtained by controlled free-radical polymerization." See paragraph [0016]. Indeed, the Example 4 referred by the Examiner uses the polymer of Example 2 prepared by controlled free-radical polymerization. See Examples 2 and 4 at page 6. Mougin further teaches that "this type of polymerization is reflected by a control of the mass of the polymers formed and by a low polydispersity index." See paragraph [0020]. The low polydispersity index is consistent with the following Wikipedia links:

[http://en.wikipedia.org/wiki/Polydispersity\\_index](http://en.wikipedia.org/wiki/Polydispersity_index)  
under "Effect of Polymerization Mechanism on PDI", (PDI is polydispersity index), it reads"....Living polymerization, a special case of addition polymerization, leads to values very close to 1."

link [http://en.wikipedia.org/wiki/Living\\_polymerization](http://en.wikipedia.org/wiki/Living_polymerization), line 5 reads "Living polymerization in the literature is often called "living" polymerization or controlled polymerization."

The triblock copolymer disclosed by Mougin in Example 2 at page 6, appears to have a polydispersity index of 2.21, which still falls outside of the currently claimed scope of the polydispersity index of equal to or greater than 2.5. See paragraph [0143].

Thus, Mougin does not teach a sequential polymerization as adopted in Examples 1-3 of the present application, which results in a polymer with a high polydispersity index as claimed. Applicants therefore request withdrawal of the rejection of claims 77-80, 82-84, 86-94, 98-103, and 159-164, as amended.

**VIII. Claim Rejections - 35 U.S.C. §103**

**A. Over Anton in view of KANTNER**

Claims 77-80, 82-84, 86-94, 98-141, and 150-164 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of KANTNER (U.S. Application Publication No. 2002/0076390) for reasons as set forth at pages 11-19 of the Office Action. Applicants respectfully disagree and traverse.

Anton does not teach, expressly or inherently, each and every element of the current claims as discussed in the previous section (Restriction Requirement), and KANTNER simply does not rectify Anton's deficiency. KANTNER teaches copolymers, See paragraphs [0010] and [0015]. KANTNER does not suggest a block polymer, let alone a block polymer comprising "at least one first block and at least one second block with different glass transition temperatures (T<sub>g</sub>) linked together via an intermediate block comprising at least one constituent monomer of the at least one first block and at least one constituent monomer of the at least one second block, wherein said intermediate block is a random copolymer block", as recited in claim 77, as amended. Paragraphs [0017] and [0018] of KANTNER only suggest that isobutyl acrylate and isobornyl (meth)acrylate could be the first monomer and the second monomer, respectively, for the making of a copolymer. Thus, KANTNER has the same deficiency as Anton. Furthermore, it is well known in the art that polymers contain same types of monomers do not necessarily have the same structure thereby leading to the same properties. The Examiner attempts to establish a theory of same monomers leading to same polymers, which is simply incorrect.

Therefore, Anton and KANTNER, whether taken alone or in combination, do not render the current claims obvious. Accordingly, Applicants respectfully request the withdrawal of the obviousness rejection.

**B. Over Anton in view of KANTNER, and in further view of  
GALLEGUILLOS**

Claims 77, 81, and 85 are rejected under under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of Kantner, and in further view of GALLEGUILLOS (U.S. Patent No. 6,410,005) for reasons as set forth at pages 19-23 of the Office Action. Applicants respectfully disagree and traverse.

Without addressing the merits of Examiner's position that "the linkage of X-X reads on the instant intermediate block", Applicants respectfully submit that GALLEGUILLOS does not rectify either Anton's and/or Kantner's deficiency. GALLEGUILLOS actually teaches a branched polymer formed through a multifunctional monomer X. See col. 1, lines 12-15, and col. 6 lines 2-4, whereas the polymer encompassed by current claims is linear. Moreover, the intermediate block as claimed, as amended, is "a random copolymer block", which clearly is distinguished from the linkage X-X.

Those three references, whether taken alone or in combination, therefore do not render the current claims obvious. As such, Applicants respectfully request the withdrawal of the obviousness rejection.

**C. Over Anton in view of KANTNER, and in further view of RAETHER**

Claims 77, and 95-97 are rejected under under 35 U.S.C. §103(a) as allegedly being unpatentable over Anton in view of Kantner, and in further view of RAETHER



(U.S. Application No. 2004/0014872) for reasons as set forth at pages 23-24 of the Office Action. Applicants respectfully disagree and traverse.

First of all, RAETHER is a U.S. national stage application publication of PCT/EP01/06707 published as WO 01/96432 in German. RAETHER has a publication date as January 22, 2004, whereas the instant application has an effective U.S. filing date as September 26, 2003. RAETHER therefore does not qualify as a prior art under 102/103(a). Assuming *arguendo* that WO 01/96432, has exactly the same disclosure as RAETHER and that the publication of WO 01/96342 constitutes prior art under 102/103 (a), WO 01/96432 does not rectify either Anton's and/or Kantner's deficiency. WO 01/96432 teaches certain kinds of block polymers. But similar to both Anton and KANTNER, WO 01/96432 does not teach or suggest a block polymer as recited in claim 77, as amended, wherein, *inter alia*, "the at least one first block is chosen from:

- a) a block with a Tg of greater than or equal to 40°C,
  - b) a block with a Tg of less than or equal to 20°C,
  - c) a block with a Tg from greater than 20 to less than 40°C,
- and the at least one second block is chosen from a category a), b) or c) different from the at least one first block "

Those three references, whether taken alone or in combination, therefore do not render the current claims obvious. As such, Applicants respectfully request the withdrawal of the obviousness rejection.

#### **IX. Double Patenting**

Claims 77-164 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims of 65-136 of copending Application No, 10/528,698 (Applicants note the Application No. should be 10/528,698 instead of 10/529,698 as listed in the Office Action, as Application

No, 10/529,698 is granted and assigned to a Japanese company ), over claims 78-159 of copending Application No, 10/528,699, over claims of 1-56 of copending Application No, 10/529,264, and over claims of 80-165 of copending Application No, 10/529,218. Office Action at 24-30. Applicants presently agree with the double patenting rejection and presently plan to file an appropriate terminal disclaimer when allowable subject matter is indicated.

### **Conclusion**


In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

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By:   
Wen Li  
Reg. No. 62,185  
(202) 408-4000